

APPEAL NUMBER
2020-00019

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision, dated 31 December, 2020, that the appellant did not qualify for a crisis supplement for hydro, because the expense was not an unexpected one as required under section 57 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation, (EAPWDR) Section 57 (Crisis supplement)

PART E – SUMMARY OF FACTS

The hearing took place during the COVID-19 Pandemic. The Appellant had submitted a Notice of Appeal requesting the appeal be held in writing.

The information before the ministry at reconsideration included the following:

The appellant is a sole recipient of disability assistance, with a case opening in March 2000. The ministry's records indicate the appellant has resided at the appellant's current address since March 2020.

The ministry recorded discussions with the appellant and between BC Hydro and the ministry in the reconsideration decision.

On November 2, 2020, the appellant submitted a BC Hydro bill to the ministry and requested a crisis supplement for essential utilities. This was followed by several discussions between the ministry and the appellant on or about 10 and 24 November 2020. The ministry reported the appellant stating that:

- The appellant could not afford it.
- The landlord did not know why the hydro bill was so high, and that the appellant had spoken with the landlord and was told that no one else's unit was like that, just the appellant's, and the appellant was confused as to why the bills were so high.
- When signing up with hydro, the appellant asked for an equal payment plan and was not put on one until July 15, for \$73/month.
- The bill was now past due, and the last payment was made in September for \$37 and some cents,
- In discussion with the ministry about the hydro bill being so high; the appellant stated to not having an air conditioner, did not use the heat and rarely had the lights on.
- The appellant had tried to make payment arrangements for the debt with the utility company, but they wanted the full payment now.
- The appellant had contacted the utility provider to give consent to discuss the account with the ministry, and had applied for BC Hydro's Customer Crisis Fund grant. The submitted BC Hydro bill dated October 23, 2020 outlined it was the final disconnection noticed for a total amount owing of \$450.61 (sic).

The panel notes a copy of the BC Hydro 'final disconnection notice', included within the reconsideration decision, showed the overdue amount at \$450.51 and finds this is the amount owing.

On November 10, 2020, the ministry phoned BC Hydro who advised the following:

- The appellant had applied for the Customer Crisis Fund over eight days ago; a decision was expected that week. The amount paid if approved would be the past due amount of \$450.51. If not approved, then that amount would be due immediately or disconnection would happen as soon as possible.
- The appellant had moved in on March 1, 2020, and had made four payments; one in May, July, August, and September.
- The appellant's last bill from BC Hydro for October 19 for \$79.76 owing (\$73 for equal payment plan plus a \$6.76 late fee) was not included in the overdue amount.
- Usage was very high. June and July usage was \$452; August and September usage was \$238; and September and October usage was \$221.
- A new equal payment plan was showing and should be \$134/month. It was questioned why usage was so high.

On this same date, November 10, 2020, the ministry phoned the appellant to discuss the request and noted the appellant advised of a cable bill for \$450 too, but a payment arrangement existed with them.

On or about November 24, 2020, the ministry phoned BC Hydro to discuss the Customer Crisis Fund, and BC Hydro advised their main criteria was a life changing event (i.e. death in the family where a person had to pay extra expenses for a funeral, losing a job, etc.) which the appellant did not have. The bills were just very high, and they would close the application as it did not meet their criteria.

On this same date, the ministry phoned the appellant to advise of the information provided by BC Hydro. The ministry noted the following regarding the conversation:

- The ministry suggested speaking to the landlord again, as well as the caretakers on site to see what was going on with the appellant's hydro, such as checking electric baseboard heating, oven, fridge, lights, and everything else. The appellant agreed to do that again, but they already checked it out and said everything was fine.
- The ministry suggested calling BC Hydro again to ask if they can look at the bills and usage before the appellant moved in and if they saw a huge difference; perhaps that would assist them in deciding to check the hydro box on site. The appellant agreed to do that.
- The ministry discussed with the appellant that if the high bills continued, it would not be affordable to continue living there; the appellant agreed as the hydro costs were almost as high as the rent, stating only being able to afford approximately \$37.50/month in hydro.
- The ministry advised that the region was in a BC Hydro moratorium zone therefore the appellant's hydro would not be cut off until April 1; at that time, if the total outstanding bills had not been made or a payment arrangement had not been made with BC Hydro, then hydro would be cut off within 48 hours.
- The ministry advised they could contact BC Hydro to possibly set up a payment arrangement, however the appellant would not be able to afford higher payments than what was being made.

On December 15, 2020 the appellant submitted a Request for Reconsideration, and reported in part in handwritten notes;

- "I can't read write"; "I still can't afford it Because It is to much";
- "I can't afford Because I am on lots Disability",
- "I can't afford it Because I am have not much money on pad".

In the Notice of Appeal and submission the appellant provided the following grounds for appeal;

- "I still can't afford it"; "Myself need help for to pay Hydro"; and requested the following services during the hearing - "I can't read, write";

Although the appellant had requested a written hearing the absence of any submitted material other than that mentioned above leaves the panel only with the commentary provided by the ministry in its reconsideration decision. From the handwritten statements made the panel believes the appellant would have benefitted from support from an advocate, however accepts that the appellant specifically did not select an advocate on the 'Release of Information' form.

As the ministry reported the interaction between themselves and the appellant without rebuttal, the panel accepts the appellant's Notice of Appeal dated January 4, 2021, and commentary contained in the reconsideration document as appellant's argument.

For the written appeal, the ministry relied on the reconsideration decision.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's decision to deny the appellant a crisis supplement for essential utilities was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when it determined that there was nothing unusual leading to additional hydro usage in the appellant's suite, and that due to this discrepancy the ministry cannot determine that the high hydro usage was unexpected.

Panel Decision

Section 57(1) sets out 3 criteria all of which the appellant must meet before the ministry may provide a crisis supplement:

1. the appellant requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed;
2. there are no resources available to the appellant;
3. failure to obtain the crisis supplement will result in imminent danger to the physical health of the appellant.

The ministry found that the appellant has met criterion 2 and 3, but not criterion 1. Therefore, the panel's discussion is limited to criterion 1 - whether the amount of electricity invoiced and referenced on the October 31, 2020 hydro disconnection notice was an unexpected expense in the case of the appellant.

The commentary indicates the appellant argues the amount of billing is both unexpected and not reflective of the appellant's use of BC Hydro services due to the lack of an air conditioner, no use of heating and rare use of lighting. Further, the Landlord has confirmed the appellant's suite is suffering a higher usage when compared to other suites in the building.

The ministry argues it is not satisfied that the hydro bill was an unexpected expense.

The ministry believes there is a discrepancy insofar as the appellant's claim to not using an air conditioner or heat and rarely having the lights on, and BC Hydro indicating very high usage for many months. As the landlord had checked the suite and said everything was fine; this suggests there was nothing unusual leading to additional hydro usage in the appellant's suite. Due to this discrepancy, the ministry found it could not determine that the high hydro usage was unexpected.

The ministry further argues that BC Hydro indicated the appellant had been making payments since May, indicating awareness of the high bills for several months. The ministry finds that the hydro bills have consistently been several hundred dollars since living in the current residence and it is no longer unexpected that the hydro bills are unaffordable for the appellant.

The appellant argues needing help with reading and writing and not having money to pay the bill. The appellant argues to being confused as to why the bills are so high and that the landlord did not know why the hydro bill was so high. Further, the appellant had spoken with the landlord and was told that no one else's unit was like that, just the appellant's.

The panel notes BC Hydro advised the ministry in November that usage had been very high, with June and July usage of \$452 however the panel sees no bills from March to May, after the first payment by the appellant; no evidence to show consistently high bills since March, and therefore no evidence of awareness of high bills at that time. The panel does agree that in December, after the reports on usage

by BC Hydro and the request for a crisis supplement, that the ministry could find it is now no longer unexpected that the hydro bills are unaffordable for the appellant.

The panel notes that the appellant had paid bills in May, July, August and September, and given the payment in September was less than the \$73 equal payment amount the appellant may have been in arrears but does not know to what amount.

The appellant advises of having contacted the utility provider to apply for BC Hydro's Customer Crisis Fund grant on or about early November and on trying to make payment arrangements for the debt with the utility company, but that they wanted the full payment now. The submitted BC Hydro bill dated October 23, 2020 outlined it was the final disconnection noticed for a total amount owing of \$450.51.

The ministry reported the appellant advising of a \$450 cable bill that had a payment arrangement in place. The ministry found it is not (sic) unexpected to pay for a non-essential service such as cable rather than allocate those funds to an essential service such as hydro. It may be that the ministry intended to suggest that it is in fact unexpected for the appellant to pay a non-essential invoice rather than an essential invoice faced with limited funds.

The panel notes there is no requirement in the legislation to prioritise payments to vendors, and finds that the appellant believed that appropriate payment plans were in place. The panel finds the ministry was not reasonable in its finding in the circumstances of the appellant that the appellant should have apportioned funds to one service over another.

The panel finds that other commentary between the ministry and the appellant on or around the November dates relates to planning considerations around paying future billing amounts and the continuing ability of the appellant to remain in the home. The panel notes the suggested actions in requesting the apartment manager and BC Hydro to further investigate the suite power consumption and the site power box, may indeed relate to causation of the high bills, but they report no outcome. The panel finds these items deal with future events and do not relate to the issue of whether the bills accrued prior to the October 31, 2020 final demand were unexpected.

The panel accepts that the appellant engaged the services of BC Hydro and requested an equal payment plan in March, presumably to set a fixed monthly payment and provide security in budgeting. It is also recognised that BC Hydro later provided such an equal payment plan in the amount of \$73 per month in July 2020, and therefore that this amount should not have been unexpected by the appellant. Indeed, this amount should and could have been used for budgeting purposes. It appears this is the amount that BC Hydro believed would approximate the amount that would be used by the appellant over a certain period. Simple arithmetic would then show that services from March to October at \$73 per month would equal \$584 as an expected total for the period.

The panel notes BC Hydro advised the ministry in November that the appellant's "bills were just really high". The amounts of usage for June and July alone were \$452; August and September \$238; and September and October \$221. The panel calculates an amount of \$911 for just these billing periods. If these are bi-monthly amounts and reflective of six of the eight months from March to October 2020, the actual average usage would be in the order of \$152 equal payment per month, twice the in-place equal payment amount provided in July by BC Hydro.

If indeed these are the amounts for only three months then that figure increases to a need for \$304 per month on an equal payment plan, four times the in-place equal payment amount. The panel notes that a revised equal payment plan amount of \$134 per month was indeed proposed or intended in November by BC Hydro, but we are not advised if the appellant was advised of this new figure.

The panel notes that section 57 (1) (a) of the legislation does not differentiate about the amount of usage or size of bills, merely that the amount needs to be unexpected. If indeed the appellant was not using many electrical appliances then an invoice higher than anticipated would be unexpected. The question then becomes what was anticipated or expected and when did the appellant become aware of it.

The panel notes that, apparently without use of air conditioning or heat and limited use of lights, the actual hydro usage was at best twice the anticipated amount of the equal payment plan provided by BC Hydro to the appellant, and at worst four times the equal payment plan figure of \$73. The panel finds that the usage of the services in the suite was indeed higher than anticipated and outside an expectation of variance, and that albeit the high use is unexplained, the amount of the bills was unexpected.

The appellant had an expectation of paying \$73 per month. Based on the available evidence the panel was unable to determine what period of service or payment the October final disconnection notice covered. The panel therefore finds no recognition of higher hydro usage or need to pay any bills higher than \$73 per month by the appellant before the receipt of the final notice on October 31, 2020 that demanded payment to avoid disconnection.

Therefore, the panel finds the ministry was not reasonable when it stated it could not determine that the high hydro usage was unexpected in the circumstances of the appellant.

Conclusion:

The panel finds that the ministry's decision to deny the appellant a crisis supplement for hydro was not reasonably supported by the evidence nor a reasonable application of the legislation in the appellant's circumstances.

The ministry's reconsideration decision is rescinded and the appellant is successful on appeal.

Relevant Legislation

EAPWDR

Crisis supplement

57 (1) *The minister may provide a crisis supplement to or for a family unit that is eligible for income assistance or hardship assistance if*

(a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and

(b) the minister considers that failure to meet the expense or obtain the item will result in

(i) imminent danger to the physical health of any person in the family unit

...

(4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:

(a) if for food, the maximum amount that may be provided in a calendar month is

\$40 for each person in the family unit;
(b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of
(i) the family unit's actual shelter cost, and
(ii) the sum of
(A) the maximum set out in section 2 of Schedule A and the maximum set out in section 4 of Schedule A, or
(B) the maximum set out in Table 1 of Schedule D and the maximum set out in Table 2 of Schedule D,
as applicable, for a family unit that matches the family unit;
(c) if for clothing, the amount that may be provided must not exceed the smaller of
(i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and
(ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.

...

(7) Despite subsection 4 (b), a crisis supplement may be provided to or for a family unit for the following:
(a) fuel for heating;
(b) fuel for cooking meals;
(c) water;
(d) hydro.

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2021-00019

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

D M Stedeford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/03/05

PRINT NAME

M Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/03/05

PRINT NAME

J Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/03/05